

2046396037

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 89-1656

September Term, 19 90

Action on Smoking and Health, Petitioner

v.

United States Court of Appeals
For the District of Columbia Circuit

Occupational Safety and Health Administration **FILED MAY 18 1991**

ON PETITION FOR REVIEW OF AN ORDER OF THE
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION **CONSTANCE L. DUPRÉ**
CLERK

Before Ruth B. Ginsburg, Silberman, and D. H. Ginsburg,
Circuit Judges.

J U D G M E N T

The petition was considered on the record from the Occupational Safety and Health Administration and on the briefs and oral arguments of counsel. The court concludes that the issues presented occasion no need for a published opinion. See D.C. Cir. Rule 14(c).

Petitioner challenges the OSHA's decision not to issue an emergency temporary standard banning tobacco smoking in the workplace. The agency is authorized to issue an ETS only if it reasonably determines that "employees are exposed to grave danger" from a toxic substance in the workplace and an ETS is "necessary" to protect employees from that danger. The standard of review for the OSHA's decision not to issue an ETS is narrow. See *In re International Chemical Workers Union*, 830 F.2d 369 (D.C. Cir. 1987). Substantially for the reasons stated in the OSHA's decision letter of September 1, 1989, we believe that the OSHA reasonably determined that it could not at this time sufficiently quantify the degree of risk associated with workplace exposure to ambient tobacco smoke to justify issuing an ETS. It is therefore

ORDERED and ADJUDGED that the petition for review be denied.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. R. 15(b)(2).

Per Curiam
FOR THE COURT

Constance L. Dupré
CONSTANCE L. DUPRÉ, CLERK

Bills of cost must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.